

STATE OF RHODE ISLAND
NEWPORT COUNTY

SUPERIOR COURT

LMG RHODE ISLAND HOLDINGS, INC.,

Plaintiff,

– v. –

PORTSMOUTH SCHOOL DEPARTMENT,

Defendant.

NC – 2018 -

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff LMG Rhode Island Holdings, Inc. alleges as follows as and for its Complaint against Defendant Portsmouth School Department:

Nature of the Action

1. This action arises under the Access to Public Records Act (“APRA”), R.I. Gen. Laws §§ 38-2-1 *et seq.* Plaintiff LMG Rhode Island Holdings, Inc. brings this declaratory judgment proceeding pursuant to Rule 57 of the Rhode Island Superior Court Rules of Civil Procedure and APRA in seeking to have this Court enjoin Defendant the Portsmouth School Department (“PSD”) from withholding an investigative report and to order PSD to release to the public the investigative report which PSD has unlawfully refused to disclose.

Parties

2. Plaintiff LMG Rhode Island Holdings, Inc. is the publisher of *The Newport Daily News* (“NDN” or the “Newspaper”), a daily (except Sunday) newspaper distributed throughout Newport County, Rhode Island. The Newspaper, which is also available online (NewportRI.com), maintains its principal place of business at 101 Malbone Road, Newport, Rhode Island 02840.

3. Defendant PSD is an “agency” or “public body” within the meaning of § 38-2-2(l) of APRA, and is therefore subject to APRA’s disclosure requirements.

Jurisdiction and Venue

4. This Court has jurisdiction over the Newspaper’s claims for legal and equitable relief in the above-captioned proceeding pursuant to R.I. Gen. Laws §§ 38-2-8(b) and 38-2-9.

5. Venue is proper in this Court under R.I. Gen. Laws § 38-2-8(b) because Newport County is the county where the record is maintained.

Factual Background

6. Upon information and belief, Nathan Bruno, a 15-year-old PSD sophomore and former football player at the school, acknowledged participating in a series of harassing text messages and phone calls received by Ryan Moniz, PSD’s head football coach. As a result, Nathan’s father, Richard Bruno, engaged Coach Moniz by email to arrange for his son to issue an in-person apology to Coach Moniz.

7. Upon information and belief, Coach Moniz was willing to meet with Nathan Bruno subject to the precondition that Nathan name two other individuals – who Coach Moniz apparently believed were members of his team – also responsible for the text messages and phone calls.

8. Upon information and belief, Coach Moniz assembled the players for a team meeting on February 6, 2018, during which he threatened to resign unless the team members identified the individuals who, together with Nathan Bruno, were responsible for the text messages and phone calls.

9. The next day, February 7, 2018, Nathan Bruno took his own life while at home.

10. Richard Bruno subsequently filed a complaint that led to a formal investigation by the Portsmouth School Committee into the tragic events culminating in his son’s suicide. The

results of the investigation, conducted by PSD's outside legal counsel (Matthew T. Oliverio, Esq.) and which included interviews with 36 individuals, were memorialized in a comprehensive written report prepared by Attorney Oliverio.

11. An Executive Summary of the Confidential Report in Connection With the Investigation of Portsmouth High School Following the Death of Student NB (the "Investigative Report") dated June 6, 2018, was read aloud at a public meeting of the Portsmouth School Committee on June 26, 2018. The Executive Summary, a true and correct copy of which is annexed hereto as **Exhibit 1**, provided the following information:

- Richard Bruno's complaint alleged that "Head football Coach Ryan Moniz, and others, intentionally or unintentionally placed an undue amount of mental and emotional stress upon his son in the weeks and days leading up to his tragic death causing the 15-year-old NB to feel isolated, shamed and bullied to the point where his only escape from the pressure was to end his life on February 7, 2018." (Ex. 1, p. 1)
- Attorney Oliverio's mandate "was to determine if any teacher, coach, staff member or member of the administration violated any current policies, procedures and protocols in their interactions with NB . . . once it was determined that he was involved in a pattern of harassing conduct directed toward Coach Moniz." (*Id.*)
- In addition to conducting extensive witness interviews, Attorney Oliverio "review[ed] memos, . . . relevant email communications, text messages, Codes of Conduct, Student Athlete Handbook, Superintendent interview summaries, letters of complaint regarding Coach Moniz, letters of support regarding Coach Moniz, Professional Development summaries, school district policies, performance evaluation forms, educational records and the autopsy report." (*Id.*, pp. 1-2)
- "Coach Moniz can be a polarizing figure. He is either revered, primarily by the supporters of the 'Gridiron Club' or he is despised and loathed." (*Id.*, p. 2)
- "It was only after the [*sic*] NB came forward to accept responsibility and agreed to apologize on February 2, 2018 where the coach's conduct turned suspect and violated aspects" of the Coaches' Code of Conduct by refusing to meet with Nathan Bruno

unless and until he identified the other two students involved in the harassment. (*Id.*, p. 4)

- By obligating Nathan Bruno to divulge the names of the other two individuals as a precondition to accepting an apology, Coach Moniz “underscore[d] the immaturity of a 39-year-old adult, charged with exhibiting a good example as a role model. Coach Moniz utterly failed in this regard. He knew or should have known that such a threat would have placed a 15-year-old adolescent in a compromised or vulnerable position to be disloyal to his friends. In doing so, the coach was not a worthy role-model and did not enhance NB’s physical, mental or social well being and development.” (*Id.*, p. 5)
- When Coach Moniz threatened to resign during the team meeting he conducted on February 6, 2018, “[h]e used his position of power, authority and influence over emotionally-charged adolescent students to resolve an adult problem – Coach Moniz’s problem, not the team’s problem. In doing so, he knew or should have known that he was causing a schism between members of the team, NB and NB’s friends, and he manipulated those relationships to satisfy his own personal interests.” (*Id.*, p. 6)

12. After presenting these findings and conclusions, the Executive Summary of the Investigative Report recommended that Coach Moniz be removed from coaching “in any capacity” in the Portsmouth School District during the 2018-19 school year, and that he not be reappointed to a coaching position until receiving appropriate training to ensure his compliance with the Coaches’ Code of Conduct. (Ex. 1, pp. 6-7)

13. The Executive Summary states that it was submitted to Ana Riley, Superintendent of the Portsmouth School District, on June 6, 2018. (Ex. 1, p. 7)

14. On June 26, 2018, based on the Investigative Report’s recommendation, the Portsmouth School Committee voted 6-0 to remove Ryan Moniz from his position as head football coach for the 2018-19 school year.

**NDN's News Coverage of the Public Controversy
Over Nathan Bruno's Tragic Death and the Portsmouth
School Committee's Removal of Coach Moniz**

15. The circumstances of Nathan Bruno's tragic suicide, and the Portsmouth School Committee's unanimous decision to relieve Ryan Moniz of his head coaching responsibilities for the 2018-19 school year, have been the subject of significant community debate, public controversy, and local news coverage. During the period from February 2018 through June 2018, *NDN* published a series of news articles concerning these events, including the following reportage:

- A. A February 8, 2018, news article headlined "Support offered amid news of student's death" which reported, *inter alia*, that Portsmouth High School officials "offered support and counseling to students, and called on the school community to come together" after word circulated of the death of a student.
- B. A June 18, 2018, news article headlined "Students organize event to honor late friend" which reported, *inter alia*, on the efforts of a group of Portsmouth High School students in organizing a "Be Great for Nate Night" in honor of their deceased friend, the proceeds of which "will go toward the Nathan Bruno Memorial Fund, which aims to support local teens."
- C. A June 27, 2018, news article headlined "PHS coach out after investigation" which reported, *inter alia*:
 - "The School Committee on Tuesday night voted 6-0 to remove Ryan Moniz as head coach of the Portsmouth High School football team for the 2018-19 school year after a reading from a report involving the suicide of 15-year-old Nathan Bruno, a student at the school."
 - "After Mary Ann Carroll, the attorney for the School Committee, read an executive summary of the report to a packed Town Hall council chamber, the committee voted to support its recommendation to remove Moniz, who has been the coach at Portsmouth for the past eight seasons."
 - "The report was compiled by Providence-based attorney Matthew Oliverio."
 - "Bruno, a sophomore, died on Feb. 7 after Moniz pressured the student, who had admitted sending prank text messages and

making crank phone calls to the coach, the report said. Bruno, according to his father, Rick Bruno, offered to apologize, but Moniz said he would not accept the apology unless Nathan Bruno 'ratted out' two friends who also were involved, the report said."

- "Moniz held a team meeting on Feb. 6 in which he told his players about the situation. He threatened to resign unless the players got involved, the report said."
- "The committee heard more than an hour of public comment, with many speaking in favor of Moniz but others saying he needs to be held accountable for his actions."
- "Committee member Fred Faerber called it a 'compelling report,' while fellow member John Wojichowski, who has two sons who played under Moniz, also voted to support the recommendation, saying Moniz showed 'poor judgment' when he put the situation at 'the feet of his players.'"

D. A June 28, 2018, news article headlined "Details of student's death emerge" which reported, *inter alia*:

- "Rick Bruno and Moniz were communicating via email to set up a time for Nathan to apologize to Moniz in person."
- "Moniz eventually placed a condition for the meeting to take place. Nathan must name the other two people - who Moniz believed were players on his team - responsible for the texts and calls."
- "'I need all the information so I can assess how to move forward from this. I can't move forward without this information,' Moniz told Rick Bruno, according to a reading Tuesday night of an executive summary of an independent investigation into the incident. 'In light of this, I am only agreeing to meet with [Nathan] if he provides me with the other two names involved.'"
- "This statement 'unwittingly placed pressure on a father to urge his son to rat out friends, a person who was trying to do the right thing by coach and son, namely have his son take responsibility, apologize and serve his penance,' according to the reading by School Committee attorney Mary Ann Carroll."
- "'What should have been an average teenage life lesson turned into a horrific tragedy,' Rick Bruno said at Tuesday night's School Committee meeting, 'especially after Nathan took full responsibility for what he did.'"

- “After hearing the executive summary and more than an hour of public comment from community members, including [Coach Moniz’s attorney] and Rick Bruno, the committee voted 6-0 to not reappoint Moniz as football coach for the 2018-19 school year, one of the recommendations outlined in the report. A second recommendation is that Moniz undergo training to ‘successfully comport himself to the coaches’ code of conduct.’”
- “Moniz was made aware in early January ‘by rumor and by police’ that Nathan, referred to only as ‘NB’ in the summary, was the main culprit in the texts and calls. He ‘opted to pursue another avenue for outing any other offenders, enlisting the services of the existing team players,’ according to the summary.”
- “Many current and former football players attested to Moniz’s character on Tuesday, crediting him with molding them into the men they are and serving as a father figure. Moniz, they said, maintained an open-door policy for players and a bully-free environment, treated all with the same respect and advocated on their behalf to college officials and coaches.”
- “The anguish from other speakers like Ken Martin was clear. ‘Why is Nathan Bruno not here?’ he said. ‘That’s a question that goes through my head on a daily basis ... Why wasn’t an apology good enough from an adolescent to an adult? I’m at a loss as a parent, as a member of this community. How was a young adolescent boy’s needs so overlooked?’”
- “‘Coach Moniz never put his head on his pillow wishing harm to any young man, I’m certain of that in my heart,’ Martin continued. ‘Something went terribly wrong here in Portsmouth, Rhode Island. Nathan Bruno was a 15-year-old boy and pressured beyond his emotional ability.’”
- “‘In mid-January, the administration knew it was Nathan Bruno,’ Rick Bruno said. ‘At that time, I should have been made aware and there should have been a safety net for Nathan, not a witch hunt.’”
- “Neither [Superintendent] Riley nor any other appointed school official spoke during the meeting.”
- “Robert Knight, while addressing the School Committee, said there is bullying at the school between faculty and students that is ‘being swept under the rug.’ There is an attitude in Portsmouth that ‘nothing goes wrong’ here, when that is not the case.”

- “Colleen Carpenter said bullying is ‘rampant’ within Portsmouth schools and said, ‘I want to know what you’re going to do about it.’”

True and correct copies of *NDN*’s news articles described above, in the format in which they were published in the newsprint edition of the Newspaper, are annexed hereto as **Exhibit 2**.

PSD’s Denials of the Newspaper’s APRA Requests

16. On or about June 27, 2018, the Newspaper’s reporter Derek Gomes submitted a request pursuant to APRA for a copy of the Investigative Report.

17. By letter issued from its legal counsel Henneous Carroll Lombardo LLC (Aubrey L. Lombardo, Esq.) on July 2, 2018, PSD refused to disclose the Investigative Report, asserting that it “is not a public record.” In denying public access, PSD claimed that the Investigative Report contained “confidential student record information” and is therefore exempt from disclosure under R.I. Gen. Laws § 38-2-2(4)(A)(I)(b); constituted correspondence from Attorney Oliverio “to the elected officials of the School Committee relating to persons whom they represent” and is therefore exempt from disclosure under R.I. Gen. Laws § 38-2-2(4)(M); and was “not a record of final action taken” by PSD and is therefore exempt from disclosure under R.I. Gen. Laws § 38-2-2(4)(P). A true and correct copy of PSD’s July 2, 2018, denial letter is annexed hereto as **Exhibit 3**.

18. By letter dated July 26, 2018, the Newspaper appealed PSD’s denial of reporter Gomes’s APRA request to PSD Superintendent Ana C. Riley, a true and correct copy of which is annexed hereto as **Exhibit 4**.

19. Superintendent Riley refused to reconsider PSD’s withholding of the Investigative Report from the public and denied the Newspaper’s appeal in a determination transmitted on August 2, 2018. In denying the appeal, PSD’s counsel parroted the APRA exemptions cited in

its original denial letter and, in the event the Investigative Report fails to qualify for a specific exemption under APRA, nevertheless asserted entitlement to balance individual privacy interests against the public's interest in disclosure of the Investigative Report. A true and correct copy of PSD's administrative appeal denial letter is annexed hereto as **Exhibit 5**.

Basis for Relief

20. The Newspaper has exhausted all administrative remedies, and commences the instant proceeding pursuant to R.I. Gen. Laws § 38-2-8(b).

21. The Newspaper seeks to prohibit enforcement of, and to vacate, Defendant's respective decisions dated July 2, 2018, and transmitted on August 2, 2018, denying public access to agency records under APRA.

22. On behalf of itself and as a representative of the public it serves, the Newspaper respectfully submits that the decisions of Defendant constitute a failure to perform a duty enjoined upon it by law and were affected by an error in law in that the decisions violated the disclosure requirements of APRA.

23. Defendant's denials of public access apply specifically and directly to *NDN* and, unless vacated, will immediately and irreparably abrogate the rights guaranteed to the Newspaper and the public at large under APRA.

24. If the decisions of Defendant are not declared invalid and vacated, the Newspaper will suffer irreparable harm to its right and obligation under the First Amendment of the United States Constitution to gather and disseminate news in the community it serves.

25. The documentary information requested is of significant and legitimate interest to the general public, and Defendant lacks a basis in law for withholding the Investigative Report, which constitutes a knowing and willful violation of APRA.

26. The Newspaper followed APRA's procedures in submitting its disclosure requests, and cannot review Defendant's decisions by appeal to another court or to any other body or officer.

27. The Newspaper has no adequate or available remedy other than this proceeding, and no previous application for the relief requested herein has been made.

Request for Relief

WHEREFORE, Plaintiff LMG Rhode Island Holdings, Inc., respectfully requests this Court:

- (1) Enter judgment declaring that, under the Access to Public Records Act, R.I. Gen. Laws §§ 38-2-1 *et seq.*, Defendant Portsmouth School Department has unlawfully refused to disclose the Investigative Report, and enjoining Defendant from continuing to withhold the Investigative Report from the press and public;
- (2) Order Defendant to provide the press and public with immediate access to the Investigative Report;
- (3) Expedite this proceeding by advancing it on the Court's calendar as authorized by R.I. Gen. Laws § 38-2-9(c);
- (4) Award the Newspaper its costs and reasonable attorneys' fees in this action, as authorized by R.I. Gen. Laws §§ 38-2-9(d); and
- (5) Grant such other and further relief as the Court may deem just and proper.

Dated: October 17, 2018

**PANNONE LOPES DEVEREAUX &
O'GARA, LLC**

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